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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 FEDERAL TRADE COMMISSION,  
4 et al.,

Plaintiffs,

v.

17 CV 124 (LLS)

6 QUINCY BIOSCIENCE HOLDING  
7 COMPANY, INC., et al.,

8 Defendants.

9 -----x

10 New York, N.Y.  
11 September 17, 2021  
12 2:35 p.m.

Before:

13 HON. LOUIS L. STANTON,

14 District Judge

15 APPEARANCES

16 FEDERAL TRADE COMMISSION

17 BY: ANDREW WONE  
ANNETTE SOBERATS  
EDWARD GLENNON

18 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL

19 Attorneys for Plaintiff People of the State of New York  
BY: KATHRYN ANN MATUSCHAK

20 KELLEY DRYE & WARREN LLP

21 Attorneys for Corporate Defendants  
BY: GEOFFREY WHITE CASTELLO III  
GLENN T. GRAHAM  
22 JACLYN MARIE METZINGER  
23 CAITLIN R. HICKEY

24 COZEN O'CONNOR PC

Attorneys for Defendant Underwood  
25 BY: MICHAEL B. de LEEUW  
TAMAR SCHWARTZ WISE

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(Case called)

MR. WONE: Good afternoon, your Honor. This is Andrew Wone on behalf of the FTC, joined by my colleagues Annette Soberats and Edward Glennon.

MS. MATUSCHAK: Your Honor, this is Kate Matuschak from the New York State Attorney General's Office.

THE COURT: Please be seated unless you are speaking or prefer to stand.

MR. CASTELLO: Good afternoon, your Honor. Geoffrey Castello, Kelley Drye & Warren LLP. I have with me today my colleagues Jaclyn Metzinger, Glenn Graham, and Caitlin Hickey, on behalf of the corporate defendants.

MR. de LEEUW: Good afternoon, your Honor. Michael de Leeuw from Cozen O'Connor, with me is Tamar Wise, representing Mark Underwood.

THE COURT: While you're up, Mr. Wone, when this motion is made --

MR. WONE: I'm sorry, your Honor, I didn't hear you.

THE COURT: Excuse me?

MR. de LEEUW: That's the FTC counsel, on the phone.

THE COURT: Oh. Is Mr. Wone speaking for the federal government?

MR. WONE: Yes, your Honor.

THE COURT: Well, I was addressing my question to you. How are you going to oppose this motion, if it's made?

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1 MR. WONE: We understand that, we admit that, AMG  
2 Capital --

3 THE COURT: Mr. Wone, we both are wearing masks. I'm  
4 not very good hearing anyway. I think if you can talk from the  
5 lectern or if you can use --

6 MR. de LEEUW: Mr. Wone is on the phone, he's on the  
7 telephone.

8 THE COURT: Whoever is representing the United States,  
9 please answer my question.

10 MR. WONE: Yes, your Honor. This is Andrew Wone from  
11 the FTC.

12 Although AMG Capital (unintelligible) monetary relief  
13 (unintelligible) the FTC, the FTC respectfully requests that  
14 the Court exercise discretion and postpone any termination as  
15 to monetary relief until closer to trial. If the Court is  
16 inclined to grant the motion, the FTC requests that the Court  
17 dismiss it --

18 THE COURT: Mr. Wone.

19 MR. WONE: -- without prejudice with leave to file and  
20 seek monetary relief if the law were to change.

21 THE COURT: Excuse me, Mr. Wone, excuse me. Let me  
22 rephrase my question.

23 How are you going to oppose this motion when it's  
24 made?

25 MR. WONE: We don't oppose the interpretation of AMG.

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1 We just ask that the Court exercise discretion in delaying its  
2 ruling on the motion or to dismiss without prejudice.

3 THE COURT: Mr. Wone, I'm not talking about delaying  
4 or not delaying. My question is: How are you going to oppose  
5 the motion?

6 MR. WONE: We don't oppose the motion.

7 THE COURT: Excuse me?

8 You don't oppose it?

9 MR. WONE: We don't oppose the motion.

10 THE COURT: Well, then why put them to the effort of  
11 making it?

12 MR. WONE: We weren't. We were only asking that the  
13 Court exercise discretion when it rules on the motion or to  
14 dismiss without prejudice.

15 THE COURT: All that you want is that any court  
16 determination be without prejudice to your raising the point if  
17 the legislature changes the rule, correct?

18 MR. WONE: Yes, your Honor.

19 THE COURT: Is there any question — and here I'm  
20 addressing the Quincy Bioscience team — is there any reason  
21 that such a new law would apply to a pending case?

22 MR. CASTELLO: Your Honor, this is Castello for the  
23 corporate defendants.

24 Our position is that that would be a retroactive law  
25 that would not apply to this case.

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1 THE COURT: Even if it states that it applies to  
2 pending cases?

3 MR. CASTELLO: Your Honor, I guess I would have to  
4 take a look at any law that was passed before I could fully  
5 answer the question.

6 The only law of the land today is AMG. And the  
7 Federal Trade Commission would be left with whatever relief it  
8 has if there's a change in law and it can argue from whatever  
9 its perceived change in law is. Today AMG forecloses any  
10 opportunity to seek monetary relief.

11 THE COURT: Well, I agree that if the law is changed,  
12 we will have to look at the changed law, and it seems to me  
13 that that's a very sage observation.

14 Is there anybody in the courtroom who opposes the  
15 determination that at present there is no right to a monetary  
16 recovery on the part of the FTC?

17 I hear none.

18 Is there anybody taking a position that the State of  
19 New York does have a right to a monetary recovery if it wins on  
20 liability?

21 MS. MATUSCHAK: Your Honor, this is Kate Matuschak for  
22 the New York State Attorney General's Office.

23 We continue to seek all the monetary relief --

24 THE COURT: Who is speaking?

25 MS. MATUSCHAK: This is Kate Matuschak.

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1 THE COURT: Can you speak into the mic better?  
2 Because with the masks and things -- I do want to hear what you  
3 want to say.

4 MS. WISE: Your Honor, I believe she's on the  
5 telephone.

6 MS. MATUSCHAK: I am, your Honor.

7 This is Kate Matuschak from the New York State  
8 Attorney General's Office.

9 We continue to seek all of the monetary relief that  
10 was requested in the complaint.

11 THE COURT: Yes, I understand that's your position.

12 Does anybody oppose it?

13 No.

14 Well, then I recur to my earlier question: Why is  
15 there a need for motion practice?

16 MR. CASTELLO: Your Honor, this is Castello.

17 I wrote the letter to your Honor on April 27  
18 requesting the premotion conference.

19 THE COURT: And we're having it.

20 MR. CASTELLO: We're having it, your Honor.

21 I don't think there's a need for motion practice. I  
22 think your Honor can rule today that the claim for monetary  
23 relief should be dismissed in this action with prejudice.

24 THE COURT: Would there be any objection to such an  
25 order as long as it has at its foot the statement about

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1 prejudice which we have discussed?

2 Very well. So ordered.

3 And we're adjourned. And thank you, all, for coming  
4 down and being so statesmanlike.

5 MR. CASTELLO: Thank you, your Honor.

6 MR. de LEEUW: Thank you, your Honor.

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